

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET
ELC CASE NO. 22 OF 2022
(FORMERLY ELDORET ELC NO. 33 OF 2016)

FRANCIS KIBET ARAP BUSIENEI.....1ST
PLAINTIFF/APPLICANT

GILBERT KOECH.....2ND
PLAINTIFF/APPLICANT

CHRISTINA JEROTICH.....3RD
PLAINTIFF/APPLICANT

SOSTEN SITIENEI.....4TH
PLAINTIFF/APPLICANT

BARNABA BUNGEI.....5TH
PLAINTIFF/APPLICANT

DAVID BETT.....6TH
PLAINTIFF/APPLICANT

DAVID MELLY.....7TH
PLAINTIFF/APPLICANT

HELLEN CHEBOLEM YEBEI.....8TH
PLAINTIFF/APPLICANT

WILLIAM BETT.....9TH
PLAINTIFF/APPLICANT

SENGE	C.	YEGO.....	10TH
PLAINTIFF/APPLICANT			
KIPROTICH	SAINA	YEGO.....	11TH
PLAINTIFF/APPLICANT			
KIPKOI		KOSGEI.....	12TH
PLAINTIFF/APPLICANT			
JAMES		BUSIENEI.....	13TH
PLAINTIFF/APPLICANT			
TALAI		RONO.....	14TH
PLAINTIFF/APPLICANT			
WILLIAM		MAIYO.....	15TH
PLAINTIFF/APPLICANT			
SAWE		BUSA.....	16TH
PLAINTIFF/APPLICANT			
SOSTEN		KIRIOR.....	17TH
PLAINTIFF/APPLICANT			
RAEL		CHEPKWONY.....	18TH
PLAINTIFF/APPLICANT			
JOSEPH		NYOKOSEI.....	19TH
PLAINTIFF/APPLICANT			
KIPROTICH	A.	SIROREI.....	20TH
PLAINTIFF/APPLICANT			
KIPKEMBOI		RONO.....	21ST
PLAINTIFF/APPLICANT			

LAWRENCE	SINGOEI.....	22ND
PLAINTIFF/APPLICANT		
CHRISTINE	SAMBU.....	23RD
PLAINTIFF/APPLICANT		
JOHN	ROP.....	24TH
PLAINTIFF/APPLICANT		
JOSEPH	SAWE.....	25TH
PLAINTIFF/APPLICANT		
CHEBUSIO	CHEMAGET.....	26TH
PLAINTIFF/APPLICANT		
JEROTICH K.	KOSGEI.....	27TH
PLAINTIFF/APPLICANT		
PAUL	MELLY.....	28TH
PLAINTIFF/APPLICANT		
PHILIP	NGELECHEI.....	29TH
PLAINTIFF/APPLICANT		
JOSEPH K.	TARUS.....	30TH
PLAINTIFF/APPLICANT		
FRED	KEMBOI.....	31ST
PLAINTIFF/APPLICANT		

-VERSUS-

KIPKEIBON ESTATES LIMITED.....
DEFENDANT/RESPONDENT

RULING

1. In the Notice of Motion dated 26th May 2025 under, inter alia, Article 48 of the Constitution of Kenya 2010 and section 1A of the Civil Procedure Act Chapter 21 Laws of Kenya, the plaintiffs/applicants through Bitok and Sambu Advocates, are seeking the orders infra;
 - a) That this Honourable Court be pleased to stay further proceedings herein pending the hearing and determination of the intended appeal before the Court of Appeal.
 - b) That the costs of this application be provided for.
2. The application is founded upon the applicants' affidavit of fifteen paragraphs sworn on even date and the grounds, inter alia;
 - a) That Ruling was delivered in this case on 19th February 2025 where the Court dismissed the application dated 14th November, 2024.
 - b) That the Applicants were aggrieved by the said decision and lodged a Notice of Appeal dated 4th March 2025
 - c) That meanwhile the Court is set to make a decision on who bears the costs of the suit.

d) That the Applicants are keen on seeing their case heard viva voce and have been appealed against the decision of this Honourable Court seeking to reopen the case of hearing on the merits.

3. The respondent through Kosgey Masese Advocates filed a replying affidavit sworn on 10th June 2025 by Wambui Kosgey, a director of the respondent and averred in part that the suit was initiated in the year by an originating summons dated 12th May 2008 for adverse possession, the matter was referred to Court Annexed Mediation and the report thereof adopted by the court. That whereas the applicants have the right to pursue their appeal, the case has been pending in court for 17 years yet litigation has to come to an end.

4. By the submissions dated 25th July 2025, learned counsel for the applicants referred to the application including the orders sought therein, the grounds of the application, the replying affidavit and was of the view that the threshold for the stay sought has been met hence, the application be allowed accordingly. To fortify the submissions, counsel cited the cases of **Safaricom Ltd-vs-Josenga Company**

Ltd & 4 others (2021) eKLR and Turbo Highway Eldoret Ltd-vs-Muniu (2022) eKLR.

5. In the submissions dated 10th June 2025, learned counsel for the respondent gave an overview of the matter and framed an issue for determination namely whether the application has merit. Reference was made to **Order 42 Rule 6 (2) of the Civil Procedure Rules 2010 on stay in case of appeal, the case of Kaptien Farmers Ltd & 17 others-vs-Cheptililik Farmers' Cooperative Society Ltd (2023) eKLR and Access Bank Kenya Ltd PLC-vs-Mengich & another (2024) eKLR.** In that regard, counsel submitted that the application is merited and it be allowed accordingly.
6. In the foregone, I proceed to determine whether the application has merit and the orders to issue for the ends of justice.
7. The applicants asserted that by the Notice of appeal dated 4th March 2025, they are dissatisfied with the entire ruling delivered on the 19th day of February, 2025 herein hence, intends to appeal to the Court of Appeal at Eldoret. **Order**

42 Rule 6 (4) of the Civil Procedure Rules 2010

stipulates;

For the purposes of this rule an appeal to the Court of Appeal is deemed to have been filed when under the Rules of the Court a notice of appeal has been given.

8. At paragraph 21 of the replying affidavit, the respondent averred in part;

‘THAT the applicants are well within their right to pursue their appeal.....’

9. In the case of **Butt-vs-Rent Restriction Tribunal (1979) eKLR**, the Court of Appeal remarked;

‘....and the appellant has an undoubted right of appeal.....’

10. The character of the subject matter and the obtaining circumstances favour the applicants to pursue their prospective appeal to the Court of Appeal as a fair opportunity to be heard is a fundamental principle of justice; see **Halsbury’s Laws of England 5th Edition 2010 Volume 61 paragraph 639.**

11. It is established law that the court has its inherent jurisdiction to safeguard the character and integrity of the subject matter of appeal, pending the resolution of the contested issues; See **Board of Governors, Moi High School Kabarak & another-vs-Malcom Bell & 2 others {2013} KESC 12 (KLR).**
12. Thus, there is merit in the application. I allow the same in terms of stay of further proceedings sought therein as stated in paragraph 1 (a) hereinabove. The applicants shall formally file an appeal to the Court of Appeal and serve the same within forty-five (45) days from this date.
13. The costs of the application shall abide the outcome of the intended appeal.
14. It is so ordered.

**DATED and DELIVERED at KAPSABET this 29th
OCTOBER 2025**

HON G M A ONGONDO
JUDGE

In the presence of;

1. Mr Sambu learned counsel for the Applicants/Plaintiffs
2. Ms Tabut instructed by Mr Kosgey learned counsel for the Respondent
3. Kariuki N, Court Assistant